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JAMES D. MAHER,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1920.

No. 742.

JAMES J. WALSH, United States Collector of Internal Revenue for the District of Connecticut,

Plaintiff in Error.

v.

FREDERICK F. BREWSTER,

Defendant in Error.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

MOTION TO ADVANCE BY DEFENDANT IN ERROR.

HENRY F. PARMELEE,
GEORGE D. WATROUS,
BARRY MORGAN,
Of Counsel for Defendant in Error.

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Now comes Frederick F. Brewster, the defendant in error herein, and respectfully moves that the above entitled cause be advanced for early hearing during the present term, and respectfully suggests that it be set down for hearing immediately after the case of Goodrich v. Edwards, No. 663, of the present term, which involves similar questions.

The above entitled writ of error presents to the court for review a judgment rendered on December 16, 1920, adjudging that the plaintiff (the defendant in error) recover of the defendant, the United States Collector of Internal Revenue for the District of Connecticut, moneys paid under protest upon the ground that they had been illegally exacted by the plaintiff in error under color of a tax unlawfully imposed upon the defendant in error. The complaint and the judgment

thereon raise two questions: (1) the constitutionality of so much of the Income Tax Law of 1916 as has been construed to tax, as income, capital increment realized upon the conversion of capital investments into cash after the passage of said act, and (2) the correctness of the construction given to said act. This case differs from the case of Merchants' Loan and Trust Company v. Smietanka, No. 608, heretofore argued at this term, in that the defendant in error in this case was an individual and the question as to the status of realized investment increment arises independently of the provisions of a will defining net income and directing the manner of its use and distribution. This case differs from Goodrich v. Edwards in that an actual increment in value was realized, whereas in Goodrich v. Edwards, the plaintiff in error suffered an actual loss in excess of the sums treated as income and upon which the tax was assessed.

The subject is important, and the courts of first instance have arrived at conflicting results. The District Court for the District of Connecticut has held the statute to be unconstitutional in so far as it is construed to tax as income capital increment realized by conversion of capital investments into cash. Rulings to the contrary have been made by the District Court of the United States for the Southern District of New York, in the case of Goodrich v. Edwards above mentioned and by the District Court of the United States for the Northern District of Illinois in the case of Merchants' Loan and Trust Company v. Smietanka above mentioned.

It is submitted that the public interest will be served by the early hearing of this cause at the same

time as the said case of Goodrich v. Edwards and by the authoritative determinations of the questions at issue.

WHEREFORE, the defendant in error respectfully prays this Honorable Court to advance the above-entitled cause for early hearing during the present term.

All of which as in duty bound is respectfully submitted for the consideration and action of the court.

Notice of this application has been served on the Department of Justice, and on the Solicitor General with copies of brief for defendant in error, ten days prior to the presentation hereof.

We are authorized to state that the Solicitor General offers no objection to this motion.

February 28, 1921.

HENRY F. PARMELEE,
GEORGE D. WATROUS,
BARRY MOHUN,
Of counsel for defendant in error.